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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

**AUG 19 1994**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of ) MM Docket 94-63  
 )  
Amendment of Section 73.202(b), ) RM-8450  
Table of Allotments, )  
FM Broadcast Stations. )  
(Rocky Mount and Bassett, Virginia))

TO: Acting Chief, Allocations Branch

**COMMENTS IN OPPOSITION TO RULE AMENDMENT**

Edward A. Baker d/b/a Radio 900 ("Baker"), licensee of AM broadcast station WCBX (formerly WODY), Bassett, Virginia, now tenders these, his Comments in opposition to the changes of Commission rules proposed in the captioned proceeding.<sup>1</sup>

By Notice of Proposed Rule Making released June 28, 1994, the Commission sought comments on a proposal tendered by WNLB Radio, Inc. ("petitioner"), licensee of station WZBB-FM, Channel 260A, Rocky Mount, Virginia, which proposed the substitution of Channel 260C3 for Channel 260A, reallocation of Channel 260C3 from Rocky Mount to Bassett, Virginia, and modification of petitioner's license to specify Bassett as Station WZBB-FM's community of license. Baker's opposition to the changes under consideration are based upon several cogent reasons.

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<sup>1</sup> Baker acquired WCBX (formerly WODY), Bassett, Virginia, by Order of the Commission released March 26, 1993, pursuant to application BAPL-930204EA.

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### **Bassett Now Receives Local Service**

In its Petition for Rule Making, Petitioner asserts that it will provide "a first local service at Bassett", apparently overlooking the fact that WODY has served Bassett as its local radio station for approximately 34 years, operating on 900 kHz, 500 w U, DA-2, with a construction permit for 1.8 kw D, 500 w N, DA-2. WCBX (the call sign was changed to WCBX by Commission letter of June 30, 1993) has pending an application filed April 7, 1994 (BMP-940407AC) to amend its power, change site and utilize a non-directional antenna system.

The Commission recognized the error of petitioner with respect to WCBX as a first local service to Bassett and in the NPRM stated:

However, our review indicates that Bassett is served by Station WCBX-AM, thereby petitioner's claim of providing a first local aural transmission service to Bassett is in fact a proposal for an additional local service to the community. (Par. 3)

Accordingly, the argument made by petitioner based upon FM Assignment Policies and Procedures, 90 FCC 2d 88, 91-92 (1992) establishing priorities for allocation of channels is undermined by petitioner's omission of the first local service at Bassett. Thus, its reliance upon category 3 (first local service) is now without merit and only category 4 (other public interest factors) is applicable.

Since WCBX is a full-time station, petitioner cannot argue that he is bringing a first service, either daytime or nighttime.

**Petitioner Would Deprive Rocky Mount of  
Its Only FM Service**

Rocky Mount, Virginia, is presently served by WNLB(AM), 1290 kHz, 3.2 kw D, 55 wN; WYTI(AM), 1570 kHz, 2.5 kw D, 440 wN and WZBB-FM, 99.9 MHz, 3 kw, 328 feet. Petitioner neglects mentioning that WNLB and WZBB are co-owned, and program separately. Removal of WZBB(FM) from Rocky Mount would deprive that community of its only local FM service. Although petitioner claims that the present 60 dBu contour of WZBB is covered by the 60 dBu contours of "at least five FM stations", these include a station in Martinsville, 22 miles distant, three stations in Roanoke, 18 miles away, and one in Winston-Salem, North Carolina, some 62 miles to the south! Petitioner does not even speculate that any of those stations provides programming for Rocky Mount.

**Petitioner's Numbers Are Not Correct**

As shown by the attached engineering statement of Roy Stype, a member of the firm of Carl E. Smith Consulting Engineers, the use of recognized FCC policies for evaluating gain and loss areas at the allotment stage reveals that the gain area proposed by petitioner is approximately 40 percent less than that projected by petitioner's engineering statement, and operation as proposed would result in a loss of 122 sq. kilometers and population of 4,358. Petitioner shows a gain of 156,714 population (164,933 minus 82,192) but when calculated in accord with Commission requirements, this is reduced to 135,588 or 62.5 percent and not 100.7 percent as contended by petitioner.

Removal of WZBB from Rocky Mount (population 4098) would result in 2049 potential local listeners per each of the remaining Rocky Mount stations; allocation of WZBB to Bassett (population 1579) would result in 790 persons per station, a service discrepancy that would go far toward enriching petitioner as owner of one of the remaining Rocky Mount stations, while resulting in serious financial distress to WCBX in Bassett. Nor can petitioner claim that its proposed move would provide an additional service to Bassett, since its present operation provides in excess of 1 mV/m to that city.

#### **Site Availability**

Although petitioner claims that "the area meeting the spacing requirements of § 73.213 is large enough to provide reasonable assurance of a suitable transmitter site if this petition is granted", petitioner shows no area in which a site must be located. On the other hand, the engineering statement attached hereto reveals at Figure 1.0 the area which a fully spaced site must be located. Scalene-triangle shaped, it lies wholly within the Philpott Lake-Fairy Stone Park area administered by the U. S. Army Corp of Engineers, the Virginia Commission on Game and Inland Fisheries, and the Franklin County Director of Planning and Zoning.<sup>2</sup>

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<sup>2</sup> An informal telephone call was made by counsel to the Assistant Administrator of Philpott Lake, U. S. Corps of Engineers, Wilmington District, who reported that the office had had "inquiries before about locating a radio station there and all of the answers were negative". A subsequent call to the Public Relations Office of the Corps of Engineers, Wilmington District, revealed that "a Rocky Mount radio station" had made inquiries a

The likelihood of petitioner securing authority from all of these agencies to erect a commercial radio station in the Philpott Lake, Fairy Stone Park area is virtually zero. Absent a showing that a site is available for the proposed move, the Commission will be wasting its time and funds in amending its Table of Allocations as petitioner now seeks.

In the absence of a showing of availability of a fully spaced site, petitioner would be obliged to seek waiver of the Commission's spacing rules. In FM Channel Assignments, 5 FCC Rcd 5572, 68 RR 2d 385 (1990), the Commission concluded:

As the [Policy and Rules] division correctly observed, the Commission has a strong interest in preserving the integrity of the Table of Allotments and the mileage separation criteria upon which the Table is based. Strict adherence to the spacing requirements reflected in the Table is "necessary. . . in order to provide a consistent, reliable and efficient scheme of [allotting] FM channels". Millington, MD, 45 RR 2d 1689, 1690-91 (B/c Bur 1979). Indeed, the Commission's policy is not to grant waivers of the spacing requirements in considering the allotment of a channel. A waiver of the spacing requirements is warranted only in an "extraordinary situation," Portland, TN, 35 FCC 2d at 602, or where a "special justification" has been shown, Toms River, NJ, 43 FCC 2d 414, 417 (1973). This stringent test is warranted because grant of a waiver would "undermine the balance struck in the FM rules between variety of services and effective coverage." Toms River at n. 3.

Nor can petitioner present a showing that its existing site is no longer available. Mission East Co., 30 FCC 2d 566, 22 RR 2d 297 (1971); or that waiver of short-spacing would provide a first local

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year ago but the office had heard nothing since, and that the general policy of the Corps is to discourage projects of this type. Petitioner will of course have an opportunity to refute this in any reply pleading that is filed.

FM service, Naguabo Broadcasting Co., 6 FCC Rcd 912, 68 RR 2d 1325 (Rev. Bd. 1991).

### Conclusion

Petitioner has made little more than a pallid showing that the proposed move and channel change would result in service to more potential listeners. No showing has been submitted with respect to the existing services in the claimed gain area. Of the four priorities for allotments, petitioner can only claim the last and has presented no public interest factors of consequence.

Petitioner's proposed additional service figures are lacking in substance and incorrect.

Petitioner would remove the only FM service from a community of 4,000 persons.

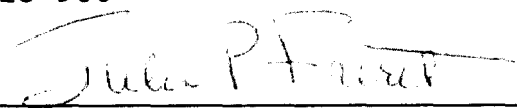
The likelihood of petitioner securing a fully spaced site is nil.

The public interest requires that the Commission deny the proposed change in its Table of Allotments and require petitioner to continue the only local FM broadcast service at Rocky Mount, Virginia.

Respectfully submitted,

Edward A. Baker d/b/a  
Radio 900

By

  
Julian P. Freret  
His Counsel

BOOTH, FRERET & IMLAY  
1233 20th Street, N. W., Ste. 204  
Washington, D. C. 20036  
(202) 296-9100  
August 19, 1994

ENGINEERING STATEMENT IN  
SUPPORT OF COMMENTS  
MM DOCKET 94-63  
CHANNEL 260C3 - BASSETT, VA  
Radio 900  
Bassett, VA

August 17, 1994

Prepared for: Mr. Edward A. Baker  
Radio 900  
P.O. Box 889  
Blacksburg, VA 24063

CARL E. SMITH CONSULTING ENGINEERS

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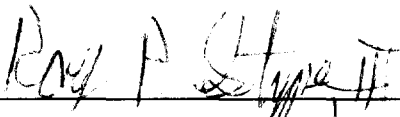


ENGINEERING AFFIDAVIT

State of Ohio                    )  
                                      )    ss:  
County of Summit                )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Radio 900 to prepare the attached "Engineering Statement In Support of Comments - MM Docket 94-63 - Channel 260C3 - Bassett, VA."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me this 17th day of August, 1994.

  
\_\_\_\_\_  
Notary Public

SHERI LYNN KURTZ, Notary Public  
For the State of Ohio  
My Commission Expires June 14, 1995  
Recorded in Summit County

/SEAL/

## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Radio 900, licensee of Radio Station WCBX(AM) - Bassett, Virginia. It supports comments in MM Docket 94-63, which proposes to substitute Channel 260C3 in Bassett, Virginia, for Channel 260A in Rocky Mount, Virginia, and modify the license of WZBB(FM) - Rocky Mount, Virginia, to specify operation on Channel 260C3 in Bassett.

In the rulemaking petition for this proceeding, the petitioner claims that this proposal would provide a first local service to Bassett. This claim, however, is factually incorrect, since WCBX is presently licensed to Bassett. In light of the fact that this proposal would not provide a first local service to Bassett, it does not appear that this proposal would result in a preferential arrangement of allotments, since it would leave Rocky Mount (population 4098) with only two local services to add a second local service to Bassett (population 1579).<sup>1</sup>

It also appears unlikely that a suitable fully spaced transmitter site exists for Channel 260C3 in Bassett. The engineering statement contained in the petition for rulemaking in this proceeding claims that the fully spaced site location area for Channel 260C3 " . . . is large enough to provide reasonable assurance of a suitable transmitter site . . . ." As shown below, however, this statement is simply not true. Figure 1.0 is a detailed map exhibit depicting this fully spaced site area. As shown in this figure, the fully spaced site area for Channel

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<sup>1</sup>All population data is from the 1990 U.S. Census.

260C3 is a small triangular area of approximately 3 square miles straddling Philpott Lake. A significant portion of this fully spaced area is occupied by the waters of Philpott Lake. Additionally, the area surrounding this lake consists of the Fairy Stone State Park and state and federal recreational lands. As outlined in Footnote 19 of the Report and Order in MM Docket 92-159, these types of areas are generally considered unsuitable as allotment reference sites, since it is extremely unlikely that authorization could ever be obtained to construct a tower in these areas. Figure 1.1 shows this fully spaced site area in relation to this state park and these recreational lands. As shown in this figure, nearly this entire area falls over water, state park land, or state or federal recreational lands. Thus, there is virtually no possibility that a suitable fully spaced site exists for this proposed allotment.

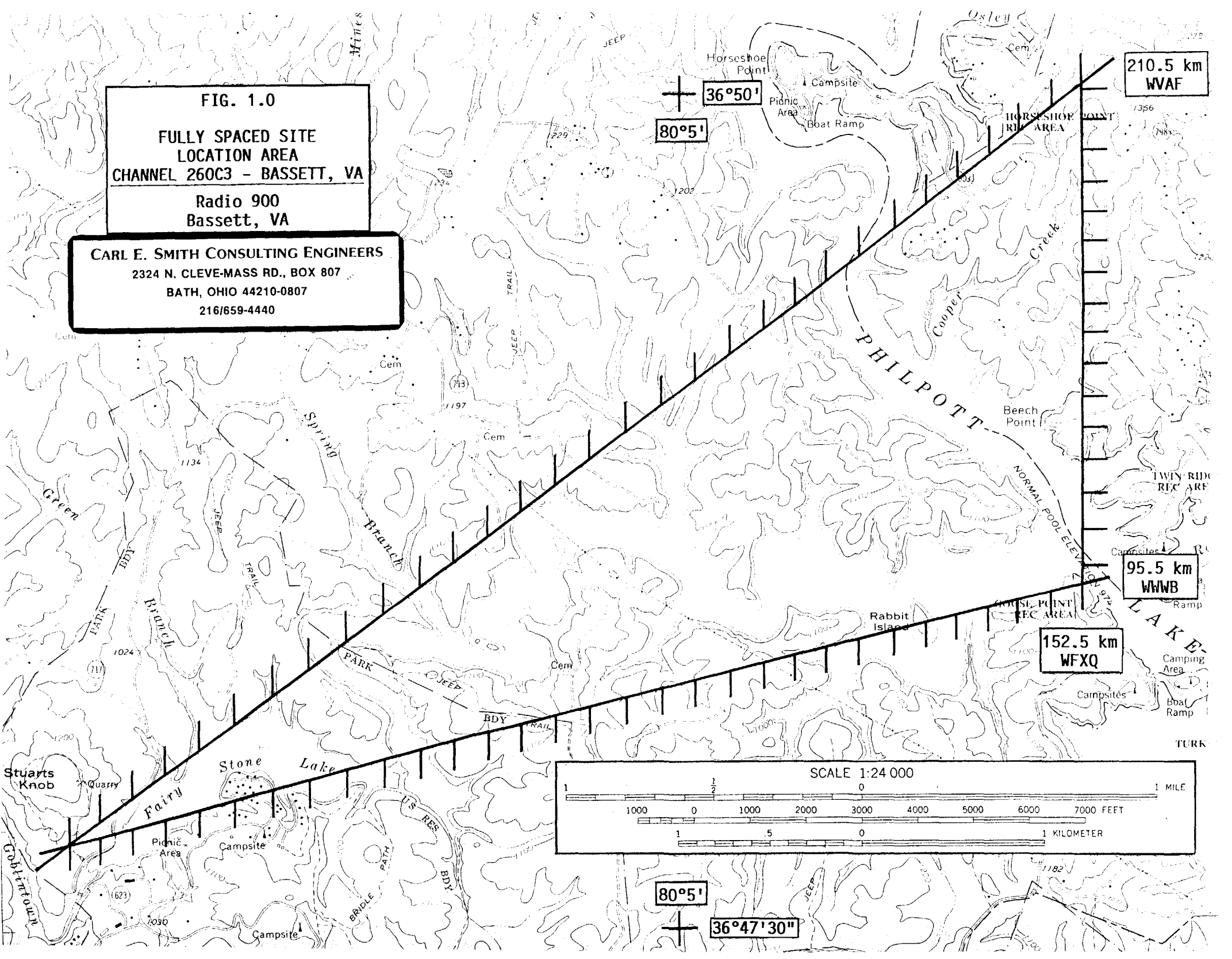
Figure 1.2 is a map exhibit depicting the present 1 mV/m contour for Channel 260A in Rocky Mount in relation to the proposed 1 mV/m contour for Channel 260C3 in Bassett. Pursuant to the applicable FCC policies for evaluating gain and loss areas at the allotment stage, these contours neglect any distortions which will occur as a result of terrain variations, which results in contours which are circular in shape. This differs from the showing contained in the engineering statement included in the petition for rulemaking in this proceeding, which included these terrain distortions in its contour projections. Table 1.2 details the land areas and populations for the present operation on Channel 260A and the proposed operation on Channel 260C3, as well as for the gain and loss areas, based upon the contours

depicted in Figure 1.2. As shown by this data, the petition for rulemaking in this proceeding has significantly overstated the net gain in population which would be realized from this proposal (by 30,595 persons). Additionally, this data shows that this proposal would result in 4358 persons losing service from WZBB. Since this proposal would not provide a first local service to Bassett or a first or second aural service to any area, this runs counter to the FCC's policy that there is an expectation of continued service to these people from an existing station, absent significant countervailing public interest benefits.

In summary, the proposed substitution of Channel 260C3 in Bassett, Virginia, for Channel 260A in Rocky Mount, Virginia, would not provide a first local service to Bassett. Nor would it result in a preferential arrangement of allotments. It also appears that no suitable fully spaced transmitter exists for Channel 260C3 in Bassett. Additionally, the grant of this proposal would deprive 4358 persons of existing service from WZBB. For these reasons, the grant of this proposal would not be consistent with the public interest. Therefore, this proposal must be denied.

FIG. 1.0  
FULLY SPACED SITE  
LOCATION AREA  
CHANNEL 260C3 - BASSETT, VA  
Radio 900  
Bassett, VA

CARL E. SMITH CONSULTING ENGINEERS  
2324 N. CLEVE-MASS RD., BOX 807  
BATH, OHIO 44210-0807  
216/659-4440

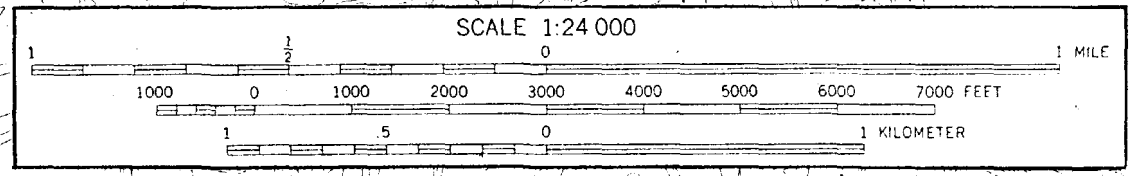


36°50'  
80°5'

210.5 km  
WVAF

95.5 km  
WVWB

152.5 km  
WFXQ



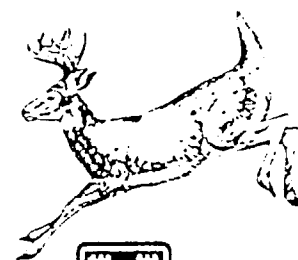
80°5'  
36°47'30"

FIG. 1.1

**FULLY SPACED SITE LOCATION  
AREA SHOWING PARK AND  
RECREATION AREA LANDS**

Radio 900  
Bassett, VA

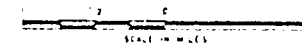
**OBSERVE FOREST  
FIRE PRECAUTIONS  
KEEP VIRGINIA GREEN**



US Army Corps  
of Engineers  
Wilmingtion District

**PHILPOTT LAKE**  
VIRGINIA

**HUNTING GUIDE**



HUNTING PERMITTED  
(Federal & State Lands)

HUNTING PROHIBITED  
(Parks, Islands & Firing Range)

**HIGHWAY MILES TO DAM**

MARTINSVILLE, VA	42
DANVILLE, VA	41
REIDSVILLE, NC	40
ROANOKE, VA	39
GREENSBORO, NC	38
WINSTON SALEM, NC	37
RADFORD, VA	36
BURLINGTON, NC	35
LYNCHBURG, VA	34
JOHN W. KERR DAM & RESERVOIR	33
DURHAM, NC	32
W. KERR SCOTT DAM & RESERVOIR	31
RALEIGH, NC	30
S. EVERETT JORDAN DAM & LAKE	29
FALLS LAKE	28
CHARLOTTE, NC	27
RICHLAND, VA	26
W. M. MASON, NC	25

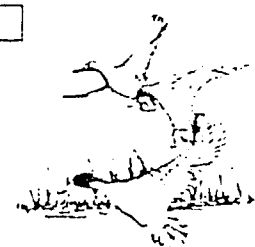
Resource Managers Office (703) 629-2703

Philpott Park & Overlook

Bowens Creek

HUNTING SAFETY

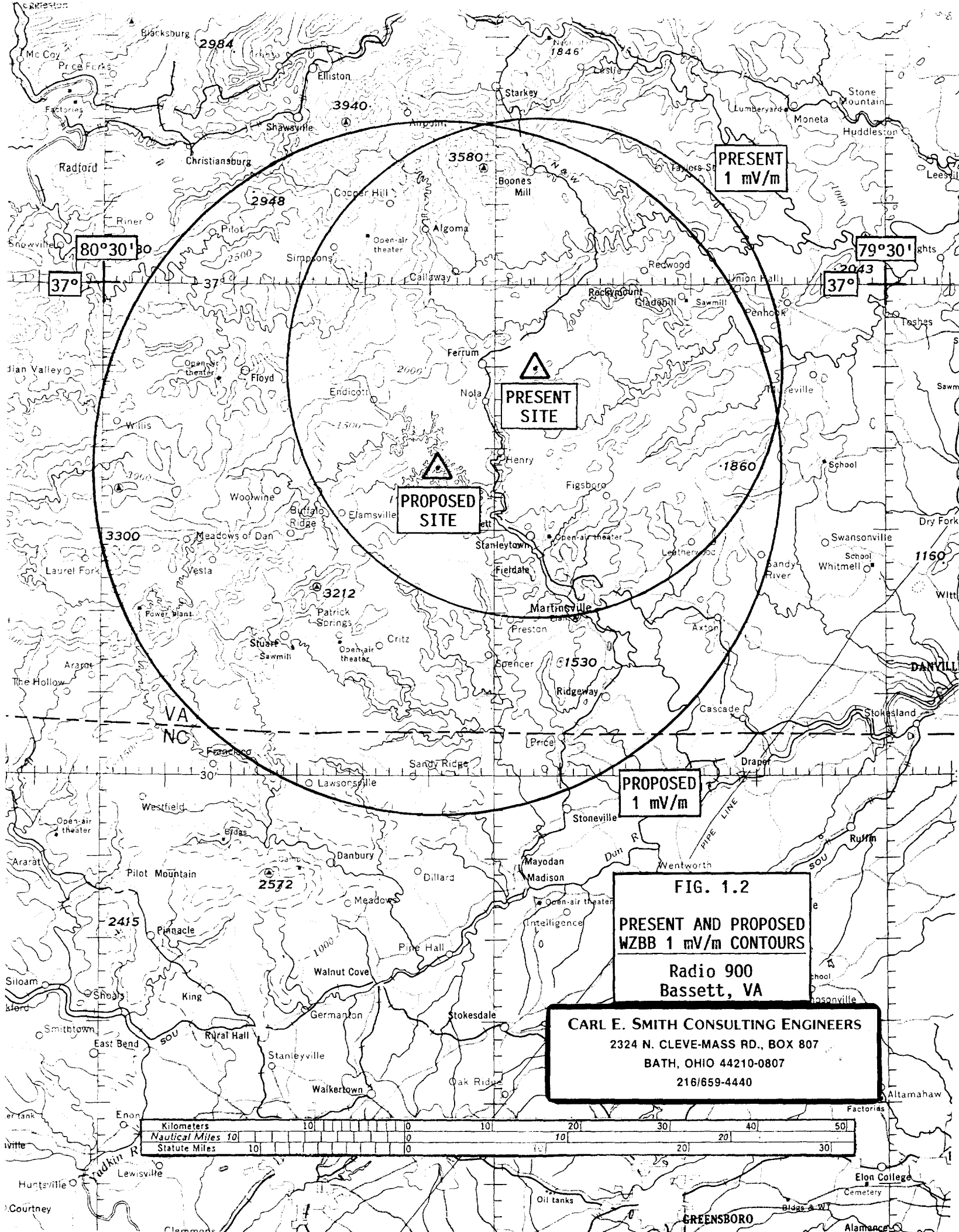
KNOW THE CORRECT WAY TO CARRY YOUR GUN.  
TREAT EVERY GUN AS IF IT WERE LOADED.  
ALWAYS POINT THE GUN Muzzle in a safe direction.  
BE SURE OF YOUR TARGET.  
KEEP THE SAFETY ON THE GUN WHEN NOT SHOOTING.  
NEVER LAID A GUN DOWN ON THE GROUND OR LEAVE IT UNATTENDED.  
NEVER DRINK OR BE DRUNK WHILE HANDLING A GUN.



**DON'T BE A LITTERBUG**  
PLEASE DISPOSE  
OF ALL REFUSE IN TRASH CANS  
KEEP AMERICA BEAUTIFUL

**PLEASE OBEY  
STATE AND FEDERAL  
FISH AND WILDLIFE  
REGULATIONS**

**CARL E. SMITH CONSULTING ENGINEERS**  
2324 N. CLEVE-MASS RD., BOX 807  
BATH, OHIO 44210-0807  
216/659-4440



**FIG. 1.2**  
**PRESENT AND PROPOSED**  
**WZBB 1 mV/m CONTOURS**  
**Radio 900**  
**Bassett, VA**

**CARL E. SMITH CONSULTING ENGINEERS**  
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TABLE 1.2  
WZBB AREA AND POPULATION

Radio 900  
 Bassett, VA

	Area (Square Kilometers)	Population (1990 Census)
Present	2463	83,412
Gain	2461	56,504
Loss	122	4358
Proposed	4802	135,558
Net Gain	2339 (95.0%)	52,146 (62.5%)



CERTIFICATE OF SERVICE

I, Julian P. Freret, a partner in the law firm of Booth, Freret & Imlay, do certify that copies of the foregoing COMMENTS IN OPPOSITION TO RULE AMENDMENT were mailed this 19th day of August, 1994, via U. S. Mail, postage prepaid, first class, to the offices of the following:

\*John A. Karousos, Acting Chief  
Allocations Branch  
Federal Communications Commission  
2025 M Street, N. W., Room 8322  
Washington, D. C. 20554

Peter Gutmann, Esquire  
Pepper & Corazzini  
1776 K Street, N. W.  
Suite 200  
Washington, D. C. 20006  
Counsel for WNLB Radio, Inc.

  
Julian P. Freret

\* Via Hand Delivery